

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/700,561
Inventor(s) : Gregory Ashton, et al.
Filed : November 16, 2000
Art Unit : 3761
Examiner : Michele M. Kidwell
Docket No. : AA315X
Confirmation No. : 6013
Customer No. : 27752
Title : Disposable Absorbent Article

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

With regard to the above-identified application, an Appeal Brief was mailed on August 14, 2007. In response, prosecution was reopened with an Office Action mailed December 12, 2007. A timely Notice of Appeal was filed on June 10, 2008. This Appeal Brief is filed pursuant to that Notice, with a two month extension, per the attached petition and the required fee. The Applicant notes that an Interview Summary for this application has been separately filed.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1, 4, 5 and 7-10 are pending. Claims 2-3, 6, and 11-29 have been cancelled. Claims 1, 4, 5 and 7-10 stand rejected. Claims 1, 4, 5 and 7-10 are appealed. A complete copy of the appealed claims is set forth in the Claims Appendix attached herewith.

STATUS OF AMENDMENTS

The Applicant has not filed an amendment subsequent to the Office Action of December 12, 2007 [hereinafter the "last Office Action"].

SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 1 claims a disposable garment (Page 6, lines 7-11; Fig. 1, #20) having a front region (Page 6, line 28; Fig. 2, #26), a back region (Page 6, lines 28-29; Fig. 2, #28), and a crotch region (Page 6, lines 29-30; Fig. 2, #30) between the front region and the back region. The disposable garment includes a chassis (Page 8, line 7; Figs. 1 and 4, #41) having a topsheet (Page 6, line 28; Figs. 1, 3 and 4, #24), a backsheet (Page 6, line 28; Figs. 1, 3 and 4, #22) joined with the topsheet, and an absorbent core (Page 6, line 28-29; Figs. 3 and 4, #25) interposed between the topsheet and the backsheet.

The chassis has a central panel (Page 7, line 10; Fig. 2, #8) having a waist edge (Page 7, line 23; Fig. 2, #190) and side edges (Page 7, line 23; Fig. 2, #191) and an ear panel (Page 7, lines 10 and 23-24; Fig. 2, #10; Fig. 6, #46) having a waist edge (Page 7, line 24; Fig. 2, #161; Fig. 6, #46A) and a leg opening edge (Page 8, line 5; Fig. 2, #153; Page 16, line 20; Fig. 6, #46B). The ear panel waist edge has a first lateral width (Page 17, lines 11-12 and 13-16; Fig. 6, #L2), and the ear panel leg opening edge has a second lateral width (Page 17, lines 9-11 and 13-16; Fig. 6, #L1), greater than the first lateral width (Page 17, lines 18-19).

The chassis further has a waistband panel (Page 7, line 10; Fig. 2, #6) in the front region and the back region. The ear panel extends laterally outwardly from each side edge of the central panel. (Page 7, lines 23-24.) The waistband panel extends longitudinally outwardly from the waist edge of the central panel and the waist edge of the ear panel. (Page 7, lines 25-27.)

The disposable garment includes a waist elastomeric material (Figs. 1 and 6, #57 and #59) joined to and extending continuously along the waistband panels in the front region and the back region so as to form a continuous extensible waistband (Fig. 1, #60) in the front region and the back region. (Page 8, lines 12-14.)

The disposable garment also includes a side elastomeric material (Fig. 8, #70) joined to the ear panel so as to form extensible ears. (Page 8, lines 11-12.) The side elastomeric material is disposed over substantially all of said ear panel to provide extensibility extending from said leg opening edge to said waist edge. (Page 16, lines 28-30.) The side elastomeric material and the waist elastomeric material are separate elements and are disposed so as not to overlap to each other. (Page 8, lines 14-16.)

The disposable garment further includes seams (Fig. 1, #32) joining the ear panel to a corresponding portion in the opposite front or back region so as to form two leg openings and a waist opening such that the extensible waistbands form a continuous extensible waist feature. (Page 34, lines 9-11.)

The Applicant argues dependent claims 4, 5 and 7-10 with independent claim 1.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1, 4, 5 and 7-10 are unpatentable under 35 USC § 102(b) over Buell, et al. (US 5,569,234).

ARGUMENTS

Rejection of Claims 1, 4, 5 and 7-10 Under 35 USC § 102(b) over Buell

The rejection of claims 1, 4, 5 and 7-10 under 35 USC § 102(b) over Buell is improper, because the Office Action failed to establish anticipation, since the Buell reference does not describe each and every claim limitation recited in the Applicant's independent claim 1.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.’ *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).” MPEP § 2131.

The Applicant's independent claim 1 recites in part an ear panel “wherein said ear panel waist edge has a first lateral width, and said ear panel leg opening edge has a second lateral width, said second lateral width greater than said first lateral width.”

“During patent examination, the pending claims must be ‘given their broadest reasonable interpretation consistent with the specification.’ *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000).” MPEP § 2111. The “words of a claim must be given their plain meaning unless the applicant has provided a clear definition in the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).” MPEP § 2111.01.

The Applicant submits that the specification and figures of the Application, as originally filed, provide clear definitions for the first lateral width and the second lateral width of the ear panel of the Applicant's independent claim 1.

“The term ‘panel’ is used herein to denote an area or element of the pull-on diaper.” (Application, page 7, line 6.) “The extensible ear 46 and 48 has a lateral width L1 between

The last Office Action cited portions of the embodiment of Figure 1A of the Buell reference against the ear panel element of the Applicant's independent claim 1, stating that "With respect to claim 1, Buell...discloses...an ear panel (64, 64')...wherein said ear panel waist edge has a first lateral width, and said ear panel leg opening edge has a second lateral width, said second lateral width greater than said first lateral width (figure 1A)." (Page 3, paragraph 3.) The last Office Action did not specifically explain how any of the side panels 64, 64' of the Buell reference might be understood to include a second lateral width greater than a first lateral width as recited in part in the Applicant's independent claim 1. For reference, Figure 1A of the Buell reference is shown below.

not admit that any of these characterizations are correct, the Applicant discusses them herein for the sake of argument. The annotations label the side panels 64 and 64' as ear panels, as cited in the last Office Action. The annotations further label a longitudinal centerline of the article as well as inner side edges, outer side edges, and lateral widths of the side panels. The longitudinal centerline and the side edges can be used to determine lateral widths of the side panels, as defined in the Applicant's specification, discussed above.

Following the Applicant's clear definitions, the side panels 64, 64' can be considered to have lateral widths perpendicular to the longitudinal centerline, between the inner side edges and the outer side edges. As illustrated in the annotated Figure 1A, above, each of the side panels 64 and 64' has a uniform lateral width. As a result, neither side panel 64 nor side panel 64' can be considered an ear panel with a second lateral width greater than a first lateral width, as recited in part in the Applicant's independent claim 1.

From the Applicant's review, the Buell reference does not appear to describe an ear panel "wherein said ear panel waist edge has a first lateral width, and said ear panel leg opening edge has a second lateral width, said second lateral width greater than said first lateral width" as recited in part in the Applicant's independent claim 1. Therefore, the Buell reference does not describe each and every claim limitation recited in the Applicant's independent claim 1. For this reason, the last Office Action failed to establish anticipation of the Applicant's independent claim 1. As a result, the Applicant respectfully requests that the Board reverse the 102(b) rejections for independent claim 1 as well as for dependent claims 4, 5 and 7-10 and allow these claims.

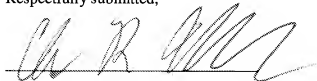
The Applicant's independent claim 1 also recites in part that a "waistband panel extends longitudinally outwardly from...the waist edge of the ear panel." The last Office Action cited elements 60 and 60' of the Buell reference against the waistband panel and cited elements 64 and 64' of the Buell reference against the ear panel. However, in the Buell reference, elements 60 and 60' do not appear to extend longitudinally outward from the elements 64 and 64' as recited in part in the Applicant's independent claim 1. (Buell, Fig. 1A, shown above.) Therefore, the Buell reference does not describe each and every claim limitation recited in the Applicant's independent claim 1. For this reason, the last Office Action failed to establish anticipation of the Applicant's independent claim 1. As a result, the Applicant respectfully requests that the Board reverse the 102(b) rejections for independent claim 1 as well as for dependent claims 4, 5 and 7-10 and allow these claims.

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SUMMARY

In view of all of the above, the Applicant respectfully submits that the appealed claims have been improperly rejected. The Applicant respectfully requests that the Honorable Board of Patent Appeals and Interferences reverse the rejections of the appealed claims and remand the application to the Examiner with instructions that these claims be allowed.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Charles R. Ware', is written over a horizontal line.

Charles R. Ware
Registration No. 54,881
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Date: October 10, 2008
Customer No. 27752

CLAIMS APPENDIX

- I. A disposable garment having a front region, a back region, a crotch region between the front region and the back region, the disposable garment comprising:

a chassis having a topsheet, a backsheet joined with the topsheet, and an absorbent core interposed between the topsheet and the backsheet, the chassis having a central panel having a waist edge and side edges, an ear panel having a waist edge and a leg opening edge, wherein said ear panel waist edge has a first lateral width, and said ear panel leg opening edge has a second lateral width, said second lateral width greater than said first lateral width, said chassis further having a waistband panel in the front region and the back region, wherein the ear panel extends laterally outwardly from each side edge of the central panel, and the waistband panel extends longitudinally outwardly from the waist edge of the central panel and the waist edge of the ear panel,

a waist elastomeric material joined to and extending continuously along the waistband panels in the front region and the back region so as to form a continuous extensible waistband in the front region and the back region,

a side elastomeric material joined to the ear panel so as to form extensible ears, wherein said side elastomeric material is disposed over substantially all of said ear panel to provide extensibility extending from said leg opening edge to said

waist edge, and wherein the side elastomeric material and the waist elastomeric material are separate elements and are disposed so as not to overlap to each other, and

seams joining said ear panel to a corresponding portion in the opposite front or back region so as to form two leg openings and a waist opening such that the extensible waistbands form a continuous extensible waist feature.

4. The disposable garment of Claim 1 wherein the extensible ear is formed from a “zero strain” stretch laminate.
5. The disposable garment of Claim 1 wherein the waist elastomeric materials comprise two separate elements, one of which is joined to the waistband panel in the front region, the other of which is joined to the waistband panel in the back region, wherein the two elements are connected to each other at the seams.
7. The disposable garment of Claim 1 wherein the backsheet comprises an inner barrier film and a nonwoven outer cover, and wherein the nonwoven outer cover is superposed outside the inner barrier film.
8. The disposable garment of Claim 7 wherein the extensible waistband comprises an extended portion of the outer cover and the waist elastomeric material.
9. The disposable garment of Claim 7 wherein the extensible ear comprises an extended portion of the outer cover and the side elastomeric material.

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10. The disposable garment of Claim 1 wherein the waist elastomeric material is superposed inside an innermost surface of the garment.

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EVIDENCE APPENDIX

(none)

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RELATED PROCEEDINGS APPENDIX

(none)